STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 12, 2008
v	No. 272731 Oakland Circuit Court
GEOFFREY DWAYNE THOMAS, Defendant-Appellant.	LC No. 2005-202939-FC

Before: Gleicher, P.J., and O'Connell and Kelly, J.J.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to commit murder, MCL 750.83, assault with intent to rob while armed, MCL 750.89, felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and four counts of possession of a firearm during the commission of a felony, third offense, MCL 750.227b. He was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 25 to 45 years for the assault with intent to commit murder and assault with intent to rob convictions, 5 to 15 years in prison for the felonious assault conviction, and 5 to 20 years in prison for the felon in possession of a firearm conviction, to be served consecutive to ten-year terms of imprisonment for the felony-firearm convictions. Because defendant was on parole when the offenses were committed, the trial court declined to award sentence credit and required that defendant's sentences be served consecutive to his prior sentence. We affirm.

I. Basic Facts

Defendant's convictions arise from the attempted robbery of a tobacco shop in Hazel Park. The store clerk, William Randazzo, waited on the suspect and was preparing to sell him some items when the suspect produced a gun and demanded money from the cash register. The suspect directed three or four customers behind a counter. The store's owner, Randy Hauck, observed what was happening and triggered an alarm. Hauck told the suspect that he was being recorded on a surveillance camera and that he was not going to get anything. Hauck then went to the back of the store to call for assistance. The suspect eventually left the store after Randazzo was unable to open the cash register. Hauck followed the suspect out the front door, and Randazzo went out the back door. As both Hauck and Randazzo were chasing the suspect, he fired his gun toward the men. The suspect fled in a small, light-colored vehicle and Randazzo recorded the license plate number. The vehicle was registered to defendant's mother and defendant had possession of the vehicle on the date of the offense.

The principal issue at trial was defendant's identity as the perpetrator. Neither Hauck nor Randazzo was able to identify defendant from a photographic array conducted shortly after the offense. However, Hauck, Randazzo, and Reginald Hansen, a customer who viewed the suspect, identified defendant as the perpetrator. In addition to the witnesses' identifications of defendant, a videotape of the offense taken by the store's surveillance system was admitted at trial. Two other videotapes were also admitted. One was a videotape of defendant recorded at a restaurant shortly after the offense, and the other was a second videotape from the store's surveillance system taken eight days after the offense, when the police took defendant to the store to record him on the surveillance system for comparison.

II. Prosecutorial Misconduct

Defendant first argues that the prosecutor improperly questioned Lieutenant Martin Barner about his opinion on the truthfulness of defendant's custodial statement. We disagree. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003). Because defendant failed to challenge this line of questioning on prosecutorial misconduct grounds, this portion of the issue is unpreserved, *People v Avant*, 235 Mich App 499, 512; 597 NW2d 864 (1999), and will be reviewed only for plain error, *People v Carines*, 460 Mich 750, 762-763; 597 NW2d 130 (1999).

During his interview with Barner, defendant asserted that he owed his drug dealer $1,400, but had lost the money at a casino. Defendant explained that the drug dealer's associates took defendant's car from him and had possession of the car at the time the charged offense was committed. Defendant claimed that they returned the vehicle to him shortly after the offense occurred, which explained why defendant had the car when he drove to Royal Oak to have lunch with his girlfriend approximately an hour after the offense. The trial court allowed Barner to testify that he had told defendant during the interview that he did not believe this story because "dope men" are not in the business of committing armed robberies, but rather those who "lose the dope man's money have to go do armed robberies to pay the dope man."

It is improper for a prosecutor to ask a witness to comment on the truthfulness of other witnesses' testimony because it is for the jury to decide questions of credibility. *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985); *People v Dobek*, 274 Mich App 58, 71; 732 NW2d 546 (2007). In this case, however, the prosecutor did not ask Barner to comment on the credibility of another witness; rather, he asked Barner to relate what Barner had told defendant during the interview to provide a context for defendant's responses and explain why the police proceeded as they did with their investigation. The trial court made it clear in its rulings that the questions posed to Barner were not intended to elicit his opinion about the truthfulness of defendant's statement, but only to explain what he told defendant during his interview. The trial court did not abuse its discretion in permitting the testimony in this limited context. Further, because the testimony was not improper, the prosecutor did not commit misconduct by eliciting it, *Dobek, supra* at 70, and no error requiring reversal will be found any prejudicial effect of the challenged conduct could have been cured by a timely instruction, *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

III. Defendant's Motion for A Mistrial

Defendant contends that the trial court abused its discretion in denying his motion for a mistrial after Reginald Rogers, defendant's parole agent, testified that he knew defendant because he had "supervised" him. We disagree. We review a trial court's denial of a motion for a mistrial for an abuse of discretion. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003); *People v Lett*, 466 Mich 206, 218; 644 NW2d 743 (2002).

Rogers testified at trial regarding defendant's appearance at the time of the offense. Before trial, Rogers was instructed not to mention that he was defendant's parole agent. During his testimony, the prosecutor asked Rogers how long he had known defendant, and Rogers responded that he had "supervised" defendant for approximately four and one-half months. Defendant thereafter moved for a mistrial, arguing that Rogers's testimony effectively informed the jury of Rogers's status as defendant's parole agent.

A mistrial should be reserved "for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *People v Bauder*, 269 Mich App 174, 195; 712 NW2d 506 (2005), quoting *People v Ortiz-Kehoe*, 237 Mich App 508, 514; 603 NW2d 802 (1999). A mistrial is generally not warranted where a witness provides an unresponsive answer to a proper question, and there is no evidence that the prosecutor encouraged the witness to give the response or was aware that the witness would provide unresponsive testimony. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995); *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). Here, the prosecutor merely asked Rogers how long he had known defendant. The prosecutor did not ask Rogers to comment on the nature of the relationship, and it was not intended to elicit Rogers's response that he "supervised" defendant. Additionally, as the trial court correctly observed, Rogers's comment that he "supervised" defendant did not necessarily suggest that he was defendant's parole officer, rather, he could have supervised defendant in another capacity, for example as a counselor or employer. For these reasons, the trial court did not abuse its discretion in denying defendant's motion for a mistrial.

IV. Live Lineup and Identification

In this case, defendant's request for a live lineup was initially granted. The witnesses appeared for a scheduled lineup, but the lineup was cancelled after defense counsel failed to timely appear. The district court refused to grant defendant's request for a second lineup. Accordingly, no lineup was held before the preliminary examination, at which Hauck, Randazzo, and Hansen identified defendant as the perpetrator. At trial, Hauck, Randazzo, and Hansen again identified defendant as the perpetrator.

A. Live Lineup

Defendant argues that the district court abused its discretion in denying his second request for a live lineup. We disagree. Whether to grant a motion for a lineup is within the trial court's discretion. *People v McAllister*, 241 Mich App 466, 471; 616 NW2d 203 (2000).

There is no absolute right to a live lineup. "A right to a lineup arises when eyewitness identification has been shown to be a material issue and when there is a reasonable likelihood of

mistaken identification that a lineup would tend to resolve." *McAllister*, *supra* at 471. In the instant case, eyewitness identification was a material issue at trial. However, we are not persuaded that there is a reasonable likelihood of "mistaken identification," given that all three witnesses had a substantial opportunity to observe the suspect within a well-lit store, and Hauck and Randazzo had an additional opportunity to view him outside. Therefore, the district court did not abuse its discretion in denying defendant's request for a live lineup.

B. In-Court Identifications

Defendant contends that the trial court erred in admitting the in-court identifications by Hauck, Randazzo, and Hansen because the confrontation at the preliminary examination was unduly suggestive. We find no error in the admission of these identifications because we conclude that there were independent bases. We review a trial court's decision to admit identification evidence for clear error, which "exists when the reviewing court is left with a definite and firm conviction that a mistake was made." *People v Hornsby,* 251 Mich App 462, 466; 650 NW2d 700 (2002).

An identification procedure may violate a defendant's right to due process when, in light of the totality of the circumstances, it is so impermissibly suggestive that it gives rise to a substantial likelihood of misidentification. *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998); *People v Kurylczyk*, 443 Mich 289, 302; 505 NW2d 528 (1993). Relevant factors to consider in deciding whether the procedure was impermissibly suggestive include: (1) the witness's opportunity to view the suspect at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of a prior description from the witness; (4) the witness's level of certainty at the time of the pretrial identification; and (5) the amount of time between the crime and the confrontation. *People v Colon*, 233 Mich App 295, 304-305; 591 NW2d 692 (1998). Further factors to take into account when the confrontation occurred at a preliminary examination include: (1) the amount of time between the offense and the confrontation; (2) the length of time the witness spent with the perpetrator; (3) whether the witness was told that the right person was in custody; and (4) the witness's failure to provide any identifying characteristics of the suspect. *People v Solomon*, 47 Mich App 208, 218-219; 209 NW2d 257 (1973) (Lesinski, CJ, dissenting), adopted 391 Mich 767 (1974). Based on the existing record from the preliminary examination, defendant has not shown that the confrontation was impermissibly suggestive.

However, even assuming that the identifications at the preliminary examination were unduly suggestive, the in-court identifications may be admissible if they were based on sufficiently independent bases to purge this taint. *Kurylczyk*, *supra* at 302; *Colon*, *supra* at 304. The following factors, originally provided in *People v Kachar*, 400 Mich 78; 252 NW2d 807 (1977), should be considered in determining whether an independent basis exists for an in-court identification:

> (1) prior relationship with or knowledge of the defendant; (2) opportunity to observe the offense, including length of time, lighting, and proximity to the criminal act; (3) length of time between the offense and the disputed identification; (4) accuracy of description compared to the defendant's actual appearance; (5) previous proper identification or failure to identify the defendant; (6) any prelineup identification lineup of another person as the perpetrator; (7) the

> nature of the offense and the victim's age, intelligence, and psychological state; and (8) any idiosyncratic or special features of the defendant. [*People v Davis*, 241 Mich App 697, 702-703; 617 NW2d 381 (2000) (citations omitted).]

There is no evidence that Hauck, Randazzo, or Hansen had a prior relationship with defendant. All three witnesses observed the offense inside the well-lit store, and Hauck and Randazzo observed the suspect outside as well. Therefore, all three witnesses had a substantial opportunity to view the suspect. The trial occurred 17 months after the offense, but the witnesses' descriptions of the suspect's race, height, and weight given to the police were similar to each other and to defendant's height and weight as reported on his driver's license. All three had previously identified defendant at the preliminary examination. Randazzo failed to identify defendant from a photographic array, and Hauck had selected another individual from the array. However, Barner did not believe any of the photographs of defendant resembled his true appearance in person. The offense involved an attempted armed robbery and the discharge of a firearm at Randazzo or Hauck. Although none of the witnesses provided testimony about any special identifying characteristics of defendant, there was no evidence that defendant had anything unusual about his appearance that the witnesses should have noticed, such as visible birthmarks, scars, or tattoos. It is not necessary for these factors to be given equal weight, *Kachar*, *supra* at 97, and given the substantial opportunity of the witnesses to observe the offense and the accuracy of their descriptions, we are persuaded that the totality of the circumstances establishes independent bases for the identifications.

Even if we were to conclude that there were not sufficient independent bases for these identifications, reversal is not warranted because harmless error analysis applies, and there was overwhelming evidence of defendant's guilt. *People v Winans*, 187 Mich App 294, 299; 466 NW2d 731 (1991). The car used by the suspect was registered to defendant's mother and in defendant's possession at the time of the robbery. Rogers identified defendant with 90 percent certainty from viewing the surveillance videotape and still photographs derived therefrom. The videotape of defendant at the restaurant shortly after the robbery and the second video of defendant taken from the store's surveillance camera were also admitted into evidence, along with various still photographs. A police forensic video specialist found similarities between images of the suspect taken from the surveillance videotape and photographs of defendant. Therefore, reversal is not warranted on this ground.

V. Offense Variable 13

Defendant contends that the trial court improperly scored offense variable (OV) 13 at 25 points. We disagree. As long as there is evidence in the record to support a particular score, a trial court has discretion in determining the number of points to be scored under the sentencing guidelines. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). "Scoring decisions for which there is any evidence in support will be upheld." *Id.*

MCL 777.43 provides that OV 13 should be scored if there is a continuing pattern of criminal behavior. Twenty-five points should be awarded if "[t]he offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person." MCL 777.43(1)(b). The instructions for OV 13 provide that "[f]or determining the appropriate points under this variable, *all* crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a) (emphasis

added). Defendant argues that his other convictions (besides the assault with intent to commit murder conviction) should not be counted for purposes of scoring OV 13. MCL 777.43(2)(a) requires the court to count both the sentencing offense and any other crimes, regardless of whether convictions resulted. See *People v Francisco,* 474 Mich 82, 87; 711 NW2d 44 (2006); *People v Wilkens,* 267 Mich App 728, 743-744; 705 NW2d 728 (2005). Defendant was convicted of at least three separate crimes against at least three separate individual victims, and the trial court did not err in scoring 25 points for OV 13. *People v Harmon,* 248 Mich App 522, 532; 640 NW2d 314 (2001).

VI. Sentencing Credit

Raising several different arguments, defendant contends that the trial court erred in determining that he was not entitled to sentence credit for time served awaiting trial. We disagree. We review de novo questions involving statutory interpretation, *People v Stead,* 270 Mich App 550, 551; 716 NW2d 324 (2006), but defendant's constitutional challenges have not been preserved and will be reviewed for plain error, *Carines, supra* at 762-763; *People v Meshell,* 265 Mich App 616, 628; 696 NW2d 754 (2005).

A. Michigan Statutes Regarding Sentencing Credits

Defendant served 490 days in jail on a parole detainer while awaiting trial and sentencing, and he claims that he is entitled to a credit against his sentence in the instant case. Defendant initially relies on MCL 769.11b, which provides:

> Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

However, "[c]redit is not available to a parole detainee for time spent in jail attendant to a new offense because 'bond is neither set nor denied when a defendant is held in jail on a parole detainer.'" *People v Stead,* 270 Mich App 550, 552; 716 NW2d 324 (2006), quoting *People v Seiders,* 262 Mich App 702, 707; 686 NW2d 821 (2004). Further, once a parole detainee has been convicted of a new offense, it is well established that he "is not entitled to credit for time served in jail on the sentence for the new offense." *Seiders, supra* at 705; *Meshell, supra* at 638. Rather, a sentence imposed for a felony committed while on parole "begin[s] to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense." MCL 768.7a(2). Pursuant to MCL 791.238(2), any sentence credit is applied to the previous paroled offense, not the new offense. *Seiders, supra* at 705; *Meshell, supra* at 638. Therefore, the trial court properly denied defendant's request for sentencing credit.

B. Double Jeopardy

Defendant contends that the trial court's denial of sentence credit violates the double jeopardy protections, see US Const, Am V; Const 1963, art 1, § 15, because it constitutes multiple punishments for the same offense, see *North Carolina v Pearce,* 395 US 711, 717; 89 S Ct 2072; 23 L Ed 2d 656 (1969), overruled in part on other grounds *Alabama v Smith,* 490 US

794; 109 S Ct 2201; 104 L Ed 2d 865 (1989); *People v Nutt*, 469 Mich 565, 574-575; 677 NW2d 1 (2004).

Defendant relies on *Pearce, supra* at 713, in which the defendant had been convicted and served part of his sentence before he succeeded in having his conviction reversed. After being retried and convicted, he was sentenced to a prison term that, when added to the time he had previously served, amounted to a greater sentence than that originally imposed. *Id.* The Supreme Court held that this constituted a violation of the double jeopardy protection against multiple punishments for the same offense and the defendant's time served must be subtracted from or credited toward the new sentence imposed on reconviction. *Id.* at 718-719. *Pearce* is distinguishable from the instant case, where defendant never received multiple punishments for the same offense. Rather, defendant was held in jail on an unrelated parole detainer. Therefore, the denial of credit against defendant's sentence in the instant case does not violate his double jeopardy protections.

Defendant also claims that he never received credit against his earlier sentence, but he fails to offer any support for this assertion. Further, our review is limited to the sentences defendant received in the instant case. We lack jurisdiction to consider issues involving defendant's previous parole sentence, which is not before this Court. *People v Watts*, 186 Mich App 686, 687 n 1; 464 NW2d 715 (1991). Like the *Watts* Court, we must trust that the Department of Corrections will count the 490 days defendant spent in jail toward his original sentence, and if it does not, "defendant may . . . enforce his rights in an appropriate proceeding." *Id.* To the extent that defendant questions the wisdom of the Department of Corrections' application of the statutes involved, his argument should be directed at the Legislature.

C. Equal Protection and Due Process

Defendant argues that MCL 791.238 violates his rights to equal protection and due process, US Const Ams, V, XIV, Const 1963, art 1, §§ 2, 17, because it treats parole detainees differently than non-detainees with respect to sentence credit. In *People v Stewart*, 203 Mich App 432, 434; 513 NW2d 147 (1994), this Court addressed this exact argument and held:

> [T]he statute treats people in jail awaiting trial differently depending on whether they are parole detainees. However, this is not unconstitutional discrimination, but a distinction that is permissible because it is rationally related to a legitimate governmental interest. Parole detainees can be treated differently than nondetainees because they *are* different than nondetainees: they owe a debt to society they have not yet fully paid. The statute advances the government's legitimate interest in seeing that debt repaid. [Emphasis in original.]

Therefore, the trial court's denial of defendant's request for a sentencing credit did not violate due process or equal protection guarantees.

VII. Defendant's Standard 4 Brief

Defendant raises several issues a supplemental brief filed in propria persona.

A. Defendant's Motion To Suppress Evidence

Defendant claims that the trial court erred in denying his motion to suppress evidence arising from his transportation to the crime scene by the police. We disagree. We review a trial court's ultimate decision regarding a motion to suppress de novo. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

"The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." US Const, Am IV; Const 1963, art 1, § 11; *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). "A 'seizure' within the meaning of the Fourth Amendment occurs only if, in view of all the circumstances, a reasonable person would have believed that he was not free to leave." *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005). The record discloses that defendant voluntarily agreed to go with the police to the police station for further questioning and to cooperate in the police investigation. Instead of taking defendant to the police station, however, the police took him to the crime scene, where he was videotaped by a store security camera. Images from that videotape were compared to images from the videotape of the actual robbery, and a police forensic video specialist testified regarding these comparisons at trial. We agree with the trial court that, even if defendant was tricked into going to the store and videotaped without his knowledge, suppression of any evidence arising from this event was not required because defendant was not being detained illegally.

Defendant's reliance on *Kaupp v Texas*, 538 US 626, 627-633; 123 S Ct 1843; 155 L Ed 2d 814, 818-822 (2003); *Hayes v Florida*, 470 US 811, 812-815; 105 S Ct 1643; 84 L Ed 2d 705, 708 (1985); *Brown v Illinois*, 422 US 590, 596-605; 95 S Ct 2254; 45 L Ed 2d 416, 423-425 (1975); and *People v Martin*, 94 Mich App 649, 653; 290 NW2d 48 (1980), is misplaced because the defendants in those cases were all detained illegally. This case is also distinguishable from *People v Bloyd*, 416 Mich 538, 553-555; 331 NW2d 447 (1982), which involved a seizure that exceeded the permissible scope of detention for a *Terry*[1] stop. As the trial court in this case observed, even if defendant did not expect to be taken to the crime scene, there was no dispute that he voluntarily agreed to go with the police and cooperate in their investigation. Further, defendant concedes that even after he was taken to the store, he was not arrested; rather, he was free to leave and was not restrained in any way. Thus, there was no seizure within the meaning of the Fourth Amendment. See *Kaupp*, *supra* at 629-632; *Jenkins*, *supra* at 32. Accordingly, the trial court did not err in denying defendant's motion to suppress.

B. Ineffective Assistance of Counsel

Defendant argues that trial counsel was ineffective for (1) failing to call certain witnesses, (2) failing to call an expert on witness identification, and (3) failing to challenge the "chain of evidence" that arose when he accompanied the police to the scene of the crime and was videotaped by the store's surveillance system. We disagree. Because defendant failed to file a motion for new trial or request a *Ginther*[2] hearing, this Court's review of his ineffective assistance of counsel claim is limited to mistakes apparent on the record. *People v Riley (After*

[1] *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

[2] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

Remand), 468 Mich 135, 139; 659 NW2d 611 (2003). Whether a defendant has been the denied effective assistance of counsel is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review a trial court's findings of fact for clear error and questions of constitutional law de novo. *Id.*

To establish ineffective assistance of counsel, a defendant must show that: 1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; 2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different; and 3) the resultant proceedings were fundamentally unfair or unreliable. *Bell v Cone*, 535 US 685, 695; 122 S Ct 1843; 152 L Ed 2d 914 (2002); *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). Defendant bears the heavy burden of overcoming the presumption that counsel's representation was effective, *LeBlanc, supra* at 578, and "the presumption that the challenged action might be considered sound trial strategy[,]" *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991). "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy." *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). This Court also may not assess counsel's competence with the benefit of hindsight. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004).

Our review is limited to mistakes on the record, which does not support defendant's claim that counsel was ineffective for failing to call either the manager or maintenance man from his girlfriend's apartment building to testify at trial. There was nothing in the record to suggest that either potential witness would have provided information favorable to defendant. Similarly, there is nothing in the existing record that supports his assertion that counsel was ineffective in failing to call an expert on witness identification at trial. Where "the record does not contain sufficient detail to support defendant's ineffective assistance claim, then he has effectively waived the issue." *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Defendant has failed to overcome the strong presumption that his attorney exercised sound trial strategy. *Davis, supra* at 368.

"Furthermore, the failure to call witnesses only constitutes ineffective assistance of counsel if it deprives the defendant of a substantial defense." *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Defendant's defense at trial was one of mistaken identity. He testified that associates of his drug dealer had taken defendant's car from him and had possession of the car at the time the charged offense was committed, and his father testified that the suspect on the surveillance videotape was not defendant. Further, counsel challenged the identification evidence through cross-examination. Therefore, defendant was not deprived of a substantial defense.

Defendant also requests a remand for an evidentiary hearing on this issue. Although defendant failed to request this hearing before the trial court, this Court may grant a motion to remand for this purpose if the defendant files an affidavit or offer of proof regarding the facts to be established on remand. MCR 7.211(C)(1)(a)(ii). However, defendant failed to provide an affidavit or other offer of proof. Further, defendant has failed to "set forth any additional facts that would require development of a record to determine if defense counsel was ineffective." *People v Williams*, 275 Mich App 194, 200; 737 NW2d 797 (2007). Therefore, remand is not warranted.

We also find no merit to defendant's argument that counsel was ineffective for not challenging the evidence that arose when he accompanied the police to the crime scene and was videotaped by the store's surveillance system. The record discloses that counsel raised this issue in a motion to suppress, which the trial court properly denied. Therefore, counsel was not ineffective on this basis.

C. Cumulative Error

Defendant lastly argues that reversal is required because of the cumulative effect of several individual errors. We disagree. We review a cumulative-error argument to determine whether the combination of alleged errors denied defendant a fair trial. *People v Hill*, 257 Mich App 126, 152; 667 NW2d 78 (2003). Because we have determined that defendant was not prejudiced by any errors, this issue is without merit. See *People v LeBlanc*, 465 Mich 575, 591 n 12; 640 NW2d 246 (2002); *People v Werner*, 254 Mich App 528, 544; 659 NW2d 688 (2002).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly